IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 883 of 1992
With
FIRST APPEAL No. 884 of 1992
With
FIRST APPEAL No. 886 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KOLI GAMNAJI DHARMAJI - Appellant(s)
Versus
RAJPUR SETANSINH PIRSINGJI -DELETED- & 2 - Defendant(s)

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Appearance :
MR MK OZA for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.
MR RAJNI H MEHTA for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/07/2006

ORAL JUDGMENT

1. These appeals are directed against the judgement and awards dated 10.01.1991 passed by the Motor Accident Claims Tribunal (Aux.), Mehsana in respective claim petitions whereby the Tribunal awarded compensation to the original claimants payable by original opponent No. 2.

2. The short facts of the case are that on

07.04.1983 original opponent No. 2 loaded truck bearing Registration No. GTF 1296 with gunny-bags containing Isabgul and Variali. About 16 to 17 persons to whom these goods belonged also travelled on this truck. They were sitting on the gunny bags. The original opponent No. 1 started driving the truck and at about 1.00 a.m. while they were going towards Unjha at about 8.30 a.m. near Sujanpura Patiya the main lank on the front side wheel near the driver broke down and, therefore, the truck turtled. The truck collapsed towards right side and the people sitting on the gunny bags fell on the ground.

2.1 The original opponent No. 2 who was sitting by the driver's side was injured and he received injuries on the head. The original opponent No. 2 as well as others who had fallen from the truck. They were about 23 persons. The driver of the truck and three labourers waited near the truck. Original opponent No. 2 with other persons came to Civil Hospital, Palanpur. Chhatra Vagha who seriously injured died at the bus stand due to the injuries. The original opponent No. 2 and some others were

admitted as indoor patients. Thereafter, the applicants filed their claim petitions for compensation. Which were partly allowed.

3. Learned advocate for the appellant has submitted that Tribunal has erred in awarding meager amount of compensation.

3.1 He further submitted that Tribunal erred in holding that the breaking of the spring or of the plank (pate) of the vehicle involved, that itself would not suggest that the accident happened because of any negligence attributable to the original opponent No. 1, driver, though it was prime duty of the driver and owner of the vehicle before starting the same to see and check whether it is in proper condition and is free from any patent defect, which both the original opponent failed to do.

4. As a result of hearing and perusal of the record it is found that in Exh. 72, the original opponent No. 2 has stated that there were three labourers. If any one of the original applicants was labourer, there was no reason for the original opponent No. 2 not to give his name as

labourer in the complaint. This is because the complaint is prepared immediately after the accident and the complainant is not likely to introduce any falsehood about the identity of the labourrers to avoid possible future civil liability. The evidence in Exh. 30 the heirs of the Chataraji, Navuben and her minor children came to know about the accident when the dead body of Chataraji was brought to her house. Therefore, she does not know in what capacity Chataraji was sitting in the truck. But the son of the Chataraji Exh. 34 has said in his evidence that Chataraji was also carrying a gunny-bag of Variyali with him. That means Chataraji was also a passenger in the truck and not a labourer. Therefore the version in the complaint appears to be correct that there were only three labourers and the original applicants are not those labourers. Further the original applicants have not been successful in proving that the original opponent driver was negligent or that the truck was not used for hire or reward for, and as discussed above, the original applicants were passengers in the truck and were not labourers.

5. I am of the view that the Tribunal has correctly appreciated the facts and law and arrived at just compensation. Learned Counsel for the appellant is not

able to point out anything contrary to take a different view of the matter. C**onnected F.A. No. 885 of 1992 is pending before Division Bench.**

6. In view of the above finding, I am of the view that the Tribunal has not committed any error in passing the impugned order. The amount awarded by the Trial Court is just and proper. I am in complete agreement with the reasoning adopted and the findings arrived at by the Trial Court. No case is made out to cause interference. Hence the appeals are dismissed. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*